
675 Wildwood Avenue
Rio Dell, Ca 95562
(707) 764-3532



**CITY OF RIO DELL
STAFF REPORT
CITY COUNCIL AGENDA
June 18, 2013**

TO: Mayor and Members of the City Council

THROUGH: Jim Stretch, City Manager

FROM: Stephanie Beauchaine, Finance Director

DATE: June 14, 2013

SUBJECT: **Draft Supplemental Environmental Impact Report (SEIR) Public Hearing**

RECOMMENDATIONS

Open the public hearing and receive comments.

BACKGROUND AND DISCUSSION

SHN Consulting Engineers has prepared a draft Supplemental Environmental Impact Report (SEIR) for the Wastewater Treatment Plant Project (WWTP). The SEIR was prepared to analyze the impacts of a proposed project modification which would change the alignment and methodology of the sewer transmission pipeline where it crosses the Eel River. Rather than crossing the Eel River within the existing Highway 101 Caltrans Bridge, the pipeline is proposed to cross underneath the river using horizontal directional drilling (HDD) techniques. This represents a minor change to the pipeline alignment of treated effluent reuse Option Reuse 1A as evaluated in the Certified Final EIR. No other change to the project is proposed.

The draft SEIR analyzes biological resources, hydrology, and water quality. Based on the analyses contained in the draft SEIR, with the incorporation of mitigation measures, all impacts would be less than significant.

The draft SEIR has been circulated for review to all oversight agencies with jurisdiction over the City Project. Notice has also been posted with the State Clearinghouse, the County, the Times Standard, and the documents have also been placed on the City's website for public review.

BUDGETARY IMPACT

None at this time.

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**CITY OF RIO DELL
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June 18, 2013**

TO: Mayor and Members of the City Council

THROUGH: Jim Stretch, City Manager

FROM: Stephanie Beauchaine, Finance Director

DATE: June 14, 2013

SUBJECT: **Bartle Wells Draft Wastewater Rate Study**

RECOMMENDATIONS

Receive the Wastewater Rate Study Prepared by Bartle Wells and direct staff to:

1. Proceed with Option 1; with or without the increased connection fee
2. Proceed with Option 2; with or without the increased connection fee
3. Proceed with the current rate structure- no changes; with or without the increased connection fee

BACKGROUND AND DISCUSSION

Bartle Wells Associates (BWA) was engaged by the City to develop a new wastewater rate structure and to update the City's wastewater capacity fee.

They have developed two options for the City Council to consider based on five criteria:

1. *Revenue Sufficiency:* Rates should recover the annual cost of service and provide revenue stability.
2. *Rate Impact:* While rates are calculated to generate sufficient revenue to cover operating and capital costs, they should be designed to minimize, as much as possible, the impacts on ratepayers.
3. *Equitable:* Rates should be proportionately allocated among all customer classes based on their estimated demand characteristics. Each user class only pays its proportionate share.

4. *Practical:* Rates should be simple in form and, therefore, adaptable to changing conditions, easy to administer and easy to understand.
5. *Provide Incentive:* Rates provide price signals which serve as indicators to conserve water, reduce wastewater flow, and to use water efficiently.

Option 1: 70% Fixed and 30% Volume

Option 1 allocates 70% of costs to the fixed charge and 30% of costs to the volume (variable) charge.

Table ES-1
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 1: 70% Fixed and 30% Volume

Fixed Monthly Charge	\$51.15	per EDU
Volume Rate		
Customer Class		
Low	\$3.53	per ccf
Domestic Strength	\$4.41	per ccf
Medium	\$6.62	per ccf
High	\$7.72	per ccf

ccf = hundred cubic feet

The average residential customer has a wastewater flow of 5 hundred cubic feet (ccf) and would have a monthly bill of \$73.20 under the proposed Option 1 rates, a slight decrease from the current monthly bill of \$73.94.

Fixed Charge		Volume Rate		Winter Water Use		Total Monthly Bill
\$51.15	+	(\$4.41	x	5) = \$73.20
			\$/ccf		ccf	

Option 2: 50% Fixed and 50% Volume

Option 2 allocates 50% of costs to the fixed charge and 50% of costs to the volume (variable) charge.

Table ES-2
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 2: 50% Fixed and 50% Volume

Fixed Monthly Charge	\$36.53	per EDU
Volume Rate		
Customer Class		
Low	\$5.88	per ccf
Domestic Strength	\$7.35	per ccf
Medium	\$11.03	per ccf
High	\$12.86	per ccf

ccf = hundred cubic feet

The average residential monthly bill under the Option 2 rates is \$73.28, a decrease of \$0.66 to the current bill of \$73.94.

$$\begin{array}{rccccccccc} & \text{Fixed} & & & \text{Volume} & & \text{Winter} & & & \text{Total} \\ & \text{Charge} & & & \text{Rate} & & \text{Water Use} & & & \text{Monthly Bill} \\ \$36.53 & + & (& \$7.35 & \times & 5 &) & = & & \$73.28 \\ & & & \text{\$/ccf} & & \text{ccf} & & & & \end{array}$$

The benefit of implementing a volume rate is equitability. Lower wastewater users pay a lower monthly bill than high wastewater users.

They have also analyzed the City's wastewater connection fee and developed a recommendation. The detailed options are presented in the attached report for council review.

BUDGETARY IMPACT

The rate changes are structured to be revenue neutral. The connection fee however could have a significant positive impact on the wastewater fund.

City of Rio Dell



Wastewater Rate and Capacity Fee Study

DRAFT FOR REVIEW

May 1, 2013



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

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Berkeley, CA 94703
T: 510-653-3399
www.bartlewells.com

May 1, 2013

**DRAFT FOR REVIEW
SUBJECT TO CHANGE**

Stephanie Beauchaine, Finance Director
City of Rio Dell
675 Wildwood Avenue
Rio Dell, CA 95562

Re: Wastewater Rate Study

Bartle Wells Associates (BWA) is pleased to submit to the City of Rio Dell the attached Wastewater Rate and Capacity Fee Study. The report presents BWA's recommended approach for changing the City's current flat wastewater rate to a flat plus volumetric rate structure. This report also recommends a new capacity fee for the wastewater system.

BWA finds that the wastewater rates and charges proposed in our report to be based on the cost of service, follow generally accepted rate design criteria, and adhere to the substantive requirements of Proposition 218. BWA believes that the proposed rates are fair and reasonable to the City's customers.

We enjoyed working with you on the rate study and appreciate the assistance and cooperation of City staff throughout the project. Please contact us if you ever have any future questions about this study and the rate recommendations.

Yours truly,

DRAFT

Doug Dove, CIPFA
Principal

Alison Lechowicz
Financial Analyst

TABLE OF CONTENTS

Executive Summary	1
Rate Setting Legislation and Principles	3
Proposition 218.....	3
Rate Development Principles.....	4
Background.....	5
Wastewater Flow and Customer Projections.....	5
Rate Structure Alternatives	7
Option 1: 70% Fixed and 30% Volume.....	8
Option 2: 50% Fixed and 50% Volume.....	9
Bill Impacts.....	10
Bill Survey.....	13
Wastewater Capacity Fee.....	15
Capacity Fee Methodology	15
Capacity Fee Calculation	16
Capacity Fee Survey	17
Adjusting Capacity Fees	18

Appendix A - Strength Classifications into Low, Domestic, Medium, and High Strength Dischargers

Executive Summary

Bartle Wells Associates (BWA) was engaged by the City to develop a new wastewater rate structure and to update the City's wastewater capacity fee.

Monthly Wastewater Rate

The current wastewater rate is a fixed monthly charge of \$73.94 per residence, also referred to as an equivalent dwelling unit (EDU). Commercial customers are assigned multiple EDUs based on their wastewater flow and pollutant loading relative to a single family customer.

BWA's alternate wastewater rate structure includes a fixed monthly charge (\$/EDU) plus a volume rate (\$/hundred cubic feet) based on estimated wastewater flow. BWA developed wastewater rate alternatives by allocating the current system revenues of \$1.13 million to fixed and variable cost categories. The fixed monthly charge is based on each customer's EDU count and the volume rates are based on wastewater flow and strength characteristics.

The benefit of implementing a volume rate is equitability. Lower wastewater users pay a lower monthly bill than high wastewater users.

Provided below are two wastewater rate alternatives. BWA recommends Option 1 as it provides more revenue stability with a higher fixed charge.

Option 1: 70% Fixed and 30% Volume

Option 1 allocates 70% of costs to the fixed charge and 30% of costs to the volume (variable) charge.

Table ES-1
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 1: 70% Fixed and 30% Volume

Fixed Monthly Charge	\$51.15	per EDU
Volume Rate		
Customer Class		
Low	\$3.53	per ccf
Domestic Strength	\$4.41	per ccf
Medium	\$6.62	per ccf
High	\$7.72	per ccf

ccf = hundred cubic feet

The average residential customer has a wastewater flow of 5 hundred cubic feet (ccf) and would have a monthly bill of \$73.20 under the proposed Option 1 rates, a slight decrease from the current monthly bill of \$73.94.

$$\begin{array}{rclclcl}
 \text{Fixed} & & \text{Volume} & & \text{Winter} & & \text{Total} \\
 \text{Charge} & & \text{Rate} & & \text{Water Use} & & \text{Monthly Bill} \\
 \$51.15 & + & (\$4.41 & \times & 5 &) & = & \$73.20 \\
 & & \text{\$/ccf} & & \text{ccf} & & &
 \end{array}$$

Option 2: 50% Fixed and 50% Volume

Option 2 allocates 50% of costs to the fixed charge and 50% of costs to the volume (variable) charge.

Table ES-2
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 2: 50% Fixed and 50% Volume

Fixed Monthly Charge	\$36.53	per EDU
Volume Rate		
Customer Class		
Low	\$5.88	per ccf
Domestic Strength	\$7.35	per ccf
Medium	\$11.03	per ccf
High	\$12.86	per ccf

ccf = hundred cubic feet

The average residential monthly bill under the Option 2 rates is \$73.28, a decrease of \$0.66 to the current bill of \$73.94.

Fixed Charge		Volume Rate		Winter Water Use		Total Monthly Bill
\$36.53	+	(\$7.35	x	5) =	\$73.28
		\$/ccf		ccf		

Billing Procedure Changes

The City has a number of rental housing unit accounts that are regularly activated and deactivated. Under the current billing policy, when rental unit accounts are deactivated, they are not billed and the City collects no revenue from them until reactivation. Although an account is deactivated, the City continues to incur fixed costs for that account related to maintenance and upkeep of the sewer system. BWA recommends that, in the future, the City bill all accounts the fixed charge regardless of account status (activated or deactivated). BWA recommends that the City bill only active accounts the volume rates based on estimated wastewater flow.

Capacity Fee

BWA conducted an analysis of the City's wastewater capacity fee and recommends increasing the current fee of \$950 to \$5,220 per equivalent dwelling unit. The recommended fee is a buy-in to the collection system and reflects the recently completed upgrades to the wastewater treatment plant. The recommended fee is moderate in comparison to other agencies in the region.

Rate Setting Legislation and Principles

In conducting this wastewater rate study, BWA adheres to the Proposition 218 requirements as described in this section. Subsequent sections provide the detailed, cost of service basis for BWA's rate recommendations.

Proposition 218

Proposition 218, the "Right to Vote on Taxes Act", was approved by California voters in November 1996 and is codified as Articles XIIIC and XIID of the California Constitution. Proposition 218 establishes requirements for imposing or increasing property related taxes, assessments, fees and charges. For many years, there was no legal consensus on whether water and wastewater rates met the definition of "property related fees". In July 2006, the California Supreme Court essentially confirmed that Proposition 218 applies to water and wastewater rates.

BWA recommends that the City follow the procedural requirements of Proposition 218 for all wastewater rate changes. These requirements include:

- **Noticing Requirement:** - The City must mail a notice of proposed rate changes to all affected property owners. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of a public rate hearing at which the proposed rates will be considered/adopted.
- **Public Hearing:** - The City must hold a public hearing prior to adopting the proposed rate changes. The public hearing must be held not less than 45 days after the required notices are mailed.
- **Rate Increases Subject to Majority Protest:** - At the public hearing, the proposed rates are subject to majority protest. If more than 50% of affected property owners submit written protests against the proposed rates, the rates cannot be adopted.

Proposition 218 also established a number of substantive requirements that apply to water rates and charges, including:

- **Cost of Service:** - Revenues derived from the fee or charge cannot exceed the funds required to provide the service. In essence, fees cannot exceed the "cost of service".
- **Intended Purpose** - Revenues derived from the fee or charge can only be used for the purpose for which the fee was imposed.
- **Proportional Cost Recovery** - The amount of the fee or charge levied on any customer shall not exceed the proportional cost of service attributable to that customer.
- **Availability of Service** - No fee or charge may be imposed for a service unless that service is used by, or immediately available to, the owner of the property.
- **General Government Services** - No fee or charge may be imposed for general governmental services where the service is available to the public at large.

Charges for water, wastewater, and refuse collection are exempt from additional voting requirements of Proposition 218, provided the charges do not exceed the cost of providing service and are adopted pursuant to procedural requirements of Proposition 218.

Rate Development Principles

In reviewing the City's current wastewater rates and finances, BWA used the following criteria in developing our recommendations:

1. *Revenue Sufficiency:* Rates should recover the annual cost of service and provide revenue stability.
2. *Rate Impact:* While rates are calculated to generate sufficient revenue to cover operating and capital costs, they should be designed to minimize, as much as possible, the impacts on ratepayers.
3. *Equitable:* Rates should be proportionately allocated among all customer classes based on their estimated demand characteristics. Each user class only pays its proportionate share.
4. *Practical:* Rates should be simple in form and, therefore, adaptable to changing conditions, easy to administer and easy to understand.
5. *Provide Incentive:* Rates provide price signals which serve as indicators to conserve water, reduce wastewater flow, and to use water efficiently.

Background

The City of Rio Dell ("City") is located in Humboldt County and provides water and wastewater service to approximately 1,200 customers. The City currently charges all customers a fixed wastewater charge based on an equivalent dwelling unit ("EDU") basis. Sometime ago, the City determined the wastewater flow and pollutant strength loading ("loads") of the average residential customer. The average residential flow and loads is set as one EDU. Each commercial customer was assigned an EDU count based on the customer's flow and loads relative to a residential unit. The City does not know when the EDU count for commercial customers was last updated. The City engaged BWA to develop a new rate structure that includes a flat or fixed charge based on EDU count and a rate based on volume of wastewater discharged.

The City also engaged BWA to develop a new wastewater capacity fee. The City was successful in securing a Clean Water State Revolving Fund Grant and Loan for the upgrade of the wastewater treatment plant. The total cost of the improvement is \$10.7 million and the City received a grant (principal forgiveness) for \$6 million. Existing ratepayers and new connections will fund \$4.7 million in construction costs which will significantly affect the calculation of the capacity fee.

Wastewater Flow and Customer Projections

The City has approximately 1,200 residential and commercial wastewater customers recorded in the City's billing software. At any given time, some of the customers may have deactivated accounts. BWA analyzed the City's billing records for 2011 and through October 2012. The EDU count for the City has varied between 1,100 and 1,300 over the past two years due to the deactivation and reactivation of accounts. The City's service area includes a number of rental units that have high turnover and revenues from these units may not be stable. The wastewater rate for FY2012/13 is \$73.94 per EDU per month. Deactivated accounts are not currently charged the monthly rate and are not included in the EDU count.

Although customer counts have historically varied, BWA determined that the City has an EDU count of 1,278 based on actual wastewater service revenues. BWA evaluated the historical wastewater flows of the residential class based on the water used during December of 2011, January of 2012, and February of 2012. The average residential winter water use and assumed wastewater flow is 5 hundred cubic feet ("ccf") per month. Wastewater flows are often estimated using winter water consumption. During the winter, customers typically do not use water for outdoor irrigation.

BWA assigned commercial customers to wastewater strength categories based on BWA's prior rate study experience, industry standard practice, and the wastewater strengths described in the Revenue Program Guidelines developed by the State Water Resources Control Board, see Table 1 and Appendix A.

Table 1
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Customer Classifications

Customer Class	BWA Recommended Strength Factor	Example Customers
Low	0.80	Car wash, office, retail store, school, laundromat
Domestic	1.00	Single family residential, multifamily residential, hotel, motel, mobile home park, churches, auto shop, gas station, bars without dining
Medium	1.50	Beauty shop, medical office, dental office
High	1.75	Restaurant, market with food prep, bakery

BWA allocated 60% of the cost of service to flow and 40% to strength. This allocation is commonly used by small wastewater agencies that do not have detailed cost information or engineering studies available. The calculation for each commercial customer's EDU count is:

$$\text{EDU count} = (\text{winter water use}/5 \text{ ccf}) \times (60\% + 40\% \times \text{strength factor})$$

The current EDU count was compared with the BWA recommended EDU count based on the equation above. Some customers received a decrease in their EDU count and some received an increase. The BWA recommended EDU count results in a net gain of 14 EDUs.

Under the current (FY2012/13) monthly rate of \$73.94 per EDU and a customer base of 1,278 EDUs, the City expects to receive \$1,133,000 in wastewater service charge revenue. Under the BWA EDU count, the wastewater service charge would be \$73.07 to collect the same amount of revenue, see Table 2.

Table 2
City of Rio Dell
Wastewater Rate and Capacity Fee Study
EDU Count

Customer Class	Current EDU Count	BWA Recommended EDU Count	Net Change
Low	25	27	2
Domestic	1,238	1,247	9
Medium	4	4	0
High	11	14	3
	1,278	1,292	14
Cost of Service (determined by City)	\$1,133,000	\$1,133,000	
Annual Cost per EDU	\$886.54	\$876.79	
Monthly Cost per EDU	\$73.88	\$73.07	

Rate Structure Alternatives

In addition to updating the EDU count, BWA developed rate structure alternatives that adequately cover the cost of providing service, are fair to the ratepayers, and include a volumetric rate based on estimated wastewater flow. BWA developed two rate alternatives in which revenues are allocated to fixed and volume rate components. Based on our experience with smaller wastewater systems, like the City's, fixed costs typically make up 50% to 90% of total costs and variable costs make up 10% to 50% of total costs. The fixed rate component is based on the EDU count described in the previous section and the volume rate is calculated based on an estimate of winter water use. Winter water use is based on the average monthly water use during December 2011, January 2012, and February 2012. The average monthly winter water use is multiplied by twelve to estimate yearly wastewater flow.

In reviewing the monthly winter water use data, BWA noted that in any given month a number of residential accounts are shutoff mid-month. These accounts had recorded water use for the month of the shutoff but would not generate sewer flow going forward and would not pay volume rates until the account is reactivated. To estimate total domestic wastewater flows for rate making purposes, BWA averaged a low estimate of wastewater flows (not including potentially shutoff accounts) with a higher estimate of wastewater flows (including all accounts).

Under current City policy, when a sewer account is shutoff the account is no longer billed. BWA recommends that the City change its current practice and continue to bill shutoff accounts the fixed portion of the sewer charge as the City continues to incur fixed costs for each customer regardless of account status. This is a common practice used by other sewer agencies in California.

Option 1: 70% Fixed and 30% Volume

Under Option 1, BWA allocates 70% of revenue to the fixed monthly charge and 30% of revenue to a new volume rate. The fixed charge is based on the BWA recommended EDU count. The volume rate for low, domestic, medium, and high strength customers is scaled to the strength factor for each customer class.

The average residential monthly bill under Option 1 is \$73.20.

$$\begin{array}{ccccccc} \text{Fixed} & & \text{Volume} & & \text{Winter} & & \text{Total} \\ \text{Charge} & & \text{Rate} & & \text{Water Use} & & \text{Monthly Bill} \\ \$51.15 & + & (\$4.41 & \times & 5 &) & = & \$73.20 \\ & & \text{\$/ccf} & & \text{ccf} & & & \end{array}$$

Table 3
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 1: 70% Fixed and 30% Volume

FIXED CHARGE CALCULATION - 70%				Fixed Charge 70% Revenue \$793,164
Total Cost of Service		\$1,133,091		
Customer Class	Strength Factor	BWA EDUs	Fixed Charge based on EDU	Annual Fixed Charge Revenue
Low	0.80	27	\$51.15	\$16,573
Domestic Strength	1.00	1,247	\$51.15	\$765,537
Medium	1.50	4	\$51.15	\$2,455
High	1.75	<u>14</u>	\$51.15	<u>\$8,593</u>
		1,292		\$793,158
VOLUME RATE CALCULATION - 30%				Volume Rate 30% Revenue \$339,927
Total Cost of Service		\$1,133,091		
				\$4.43 avg rate per ccf
Customer Class	Strength Factor	Total Flow ¹	Volume Rate ²	Annual Volume Rate Revenue
Low	0.80	1,436	\$3.53	\$5,069
Domestic Strength	1.00	74,544	\$4.41	\$328,739
Medium	1.50	156	\$6.62	\$1,033
High	1.75	<u>608</u>	\$7.72	<u>\$4,694</u>
		76,744		\$339,535

1 - Units are hundred cubic feet (ccf). Based on winter water use. Domestic flow is based on an average of high and low wastewater flow estimates.

2 - Volume rates are scaled to the domestic rate based on the strength factor (i.e. the low strength rate is 0.8 times the domestic strength rate). The domestic strength rate is set such that the total volume rate revenue is less than or equal to 30% of the cost of service.

Option 2: 50% Fixed and 50% Volume

Under Option 2, BWA allocates 50% of revenue to the fixed monthly charge and 50% of revenue to a new volume rate. The fixed charge is based on the BWA recommended EDU count. The volume charge for low, domestic, medium, and high strength customers is scaled to the strength factor for each customer class.

The average residential monthly bill under Option 2 is \$73.28.

$$\begin{array}{rcccl} \text{Fixed} & & \text{Volume} & & \text{Winter} & & \text{Total} \\ \text{Charge} & & \text{Rate} & & \text{Water Use} & & \text{Monthly Bill} \\ \$36.53 & + & (\$7.35 & \times & 5 &) & = & \$73.28 \\ & & \text{\$/ccf} & & \text{ccf} & & & \end{array}$$

Table 4
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Rate Structure Option 2: 50% Fixed and 50% Volume

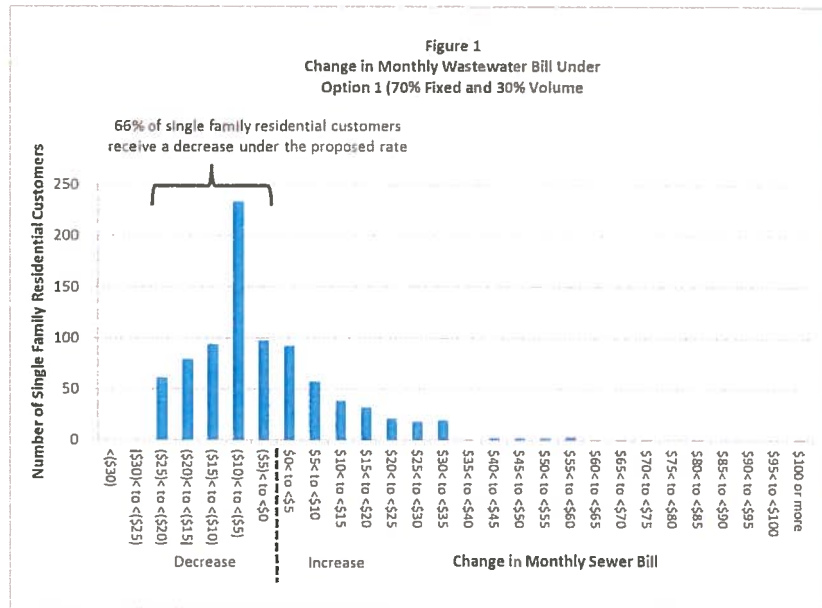
FIXED CHARGE CALCULATION - 50%				Fixed Charge 50% Revenue \$566,546
Total Cost of Service		\$1,133,091		
Customer Class	Strength Factor	BWA EDUs	Fixed Charge based on EDU	Annual Fixed Charge Revenue
Low	0.80	27	\$36.53	\$11,836
Domestic Strength	1.00	1,247	\$36.53	\$546,727
Medium	1.50	4	\$36.53	\$1,753
High	1.75	14	\$36.53	\$6,137
		1,292		\$566,453
VOLUME RATE CALCULATION - 50%				Volume Rate 50% Revenue \$566,546
Total Cost of Service		\$1,133,091		
				\$7.38 avg rate per ccf
Customer Class	Strength Factor	Total Flow ¹	Volume Rate ²	Annual Volume Rate Revenue
Low	0.80	1,436	\$5.88	\$8,444
Domestic Strength	1.00	74,544	\$7.35	\$547,898
Medium	1.50	156	\$11.03	\$1,721
High	1.75	608	\$12.86	\$7,819
		76,744		\$565,882

1 - Units are hundred cubic feet (ccf). Based on winter water use. Domestic flow is based on an average of high and low wastewater flow estimates.

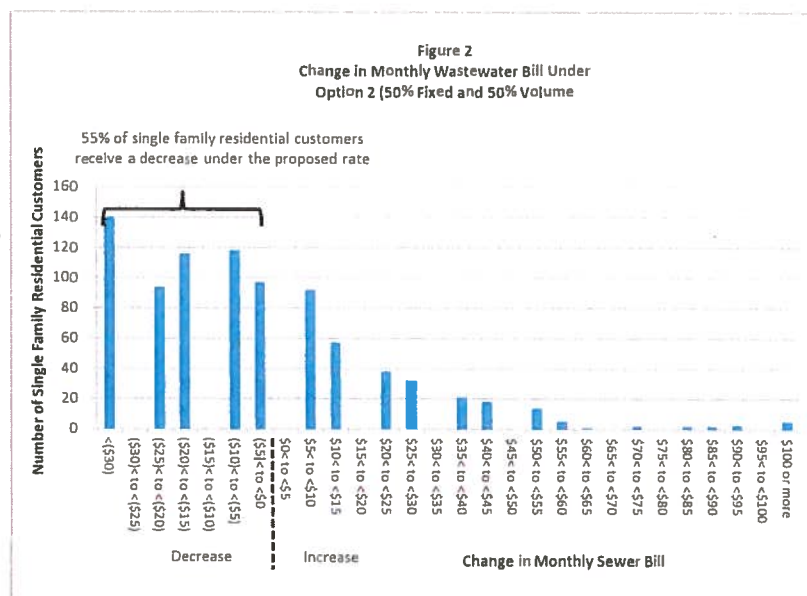
2 - Volume rates are scaled to the domestic rate based on the strength factor (i.e. the low strength rate is 0.8 times the domestic strength rate). The domestic strength rate is set such that the total volume rate revenue is less than or equal to 50% of the cost of service.

Bill Impacts

Transitioning to a volume rate, the City will benefit low water users who will receive reductions in their monthly wastewater bills. BWA analyzed the monthly bills of single family residential customers. Under the 70% Fixed/30% Volume Revenue Option (Option 1), about 66% of single family residential customers would receive a decrease and about 34% of single family residential customers would receive an increase in their monthly wastewater bills, see Figure 1.



Under the 50% Fixed/50% Volume Revenue Option (Option 2), about 55% of single family residential customers would receive a decrease and about 45% of single family residential customers would receive an increase in their monthly wastewater bills, see Figure 2. Under Option 2, there is a greater spread in the distribution of change in the monthly bills.



Tables 5 and 6 show bill impacts to low, average, and high water users under Options 1 and 2, respectively.

Table 5
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Single Family Residential Customer Bills Comparison
Rate Structure Option 1: 70% Fixed and 30% Volume

Low User (3ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$51.15	1	\$51.15
Volume	\$4.41	3	<u>\$13.23</u>
Total monthly bill			\$64.38
Net change (recommended less current)			(\$9.56)
<hr/>			
Average User (5ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$51.15	1	\$51.15
Volume	\$4.41	5	<u>\$22.05</u>
Total monthly bill			\$73.20
Net change (recommended less current)			(\$0.74)
<hr/>			
High User (8ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$51.15	1	\$51.15
Volume	\$4.41	8	<u>\$35.28</u>
Total monthly bill			\$86.43
Net change (recommended less current)			\$12.49

Table 6
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Single Family Residential Customer Bills Comparison
Rate Structure Option 2: 50% Fixed and 50% Volume

Low User (3ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$36.53	1	\$36.53
Volume	\$7.35	3	<u>\$22.05</u>
Total monthly bill			\$58.58
Net change (recommended less current)			(\$15.36)
<hr/>			
Average User (5ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$36.53	1	\$36.53
Volume	\$7.35	5	<u>\$36.75</u>
Total monthly bill			\$73.28
Net change (recommended less current)			(\$0.66)
<hr/>			
High User (8ccf)	Rate	Unit	Total Charge
Current			
Fixed	\$73.94	1	<u>\$73.94</u>
Total monthly bill			\$73.94
Recommended			
Fixed	\$36.53	1	\$36.53
Volume	\$7.35	8	<u>\$58.80</u>
Total monthly bill			\$95.33
Net change (recommended less current)			\$21.39

Bill Survey

BWA conducted a bill survey to compare the current and proposed single family wastewater bill in the City of Rio Dell to other local agencies. Rio Dell currently has the highest sewer bill in the region, see Figure 3 and Table 7.

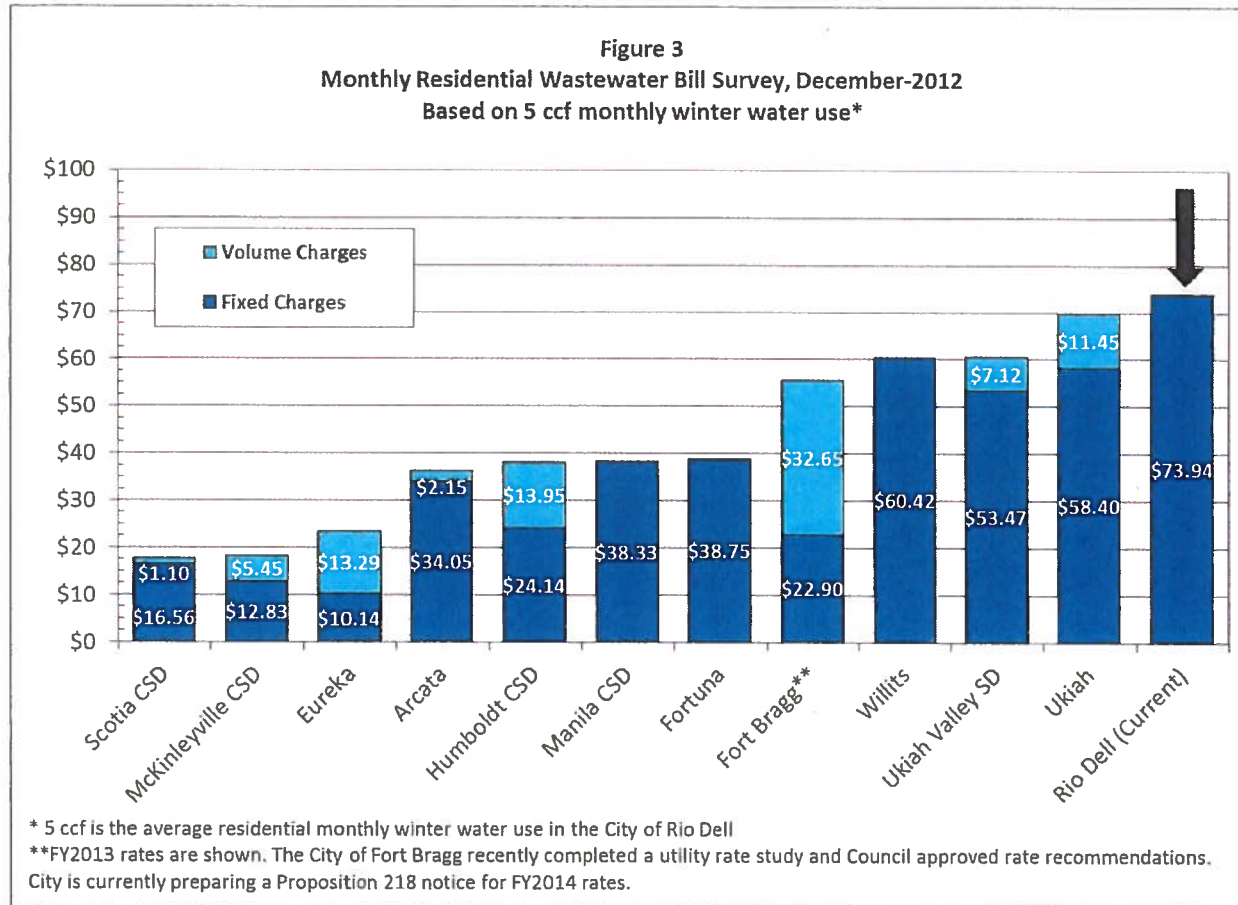


Table 7
City of Rio Dell
Wastewater Rate Study
Survey of Typical Monthly Bills of Residential Customers

Based on winter water use of 5 ccf per month	
<u>Scotia Community Services District</u>	
Fixed	16.56
Flow-based (\$0.22/ccf up to 12 ccf)	1.10
Total Monthly Bill	17.66
<u>McKinleyville Community Services District</u>	
Fixed	12.83
Flow-based (\$1.09/ccf up to 12 ccf)	5.45
Total Monthly Bill	18.28
<u>City of Eureka</u>	
Fixed	10.14
Volume-based on water use over 2 units (\$4.43/ccf)	13.29
Total Monthly Bill	23.43
<u>City of Arcata</u>	
Base Charge	28.00
Sewer Repair Fee	5.00
Flow over allowance of 4.5 ccf (\$4.30/ccf)	2.15
Subtotal	35.15
Utility Tax of 3%	1.05
Total Monthly Bill	36.20
<u>Humboldt Community Services District</u>	
Customer Charge	3.77
Fixed Charge	20.37
Flow-based (\$2.79/ccf)	13.95
Total Monthly Bill	38.09
<u>Manila Community Services District</u>	
Fixed	38.33
Total Monthly Bill	38.33
<u>City of Fortuna</u>	
Base Charge for up to 5 ccf of flow	38.75
Flow-based (\$8.61/ccf over 5)	0.00
Total Monthly Bill	38.75
<u>City of Fort Bragg¹</u>	
Fixed	22.90
Flow-based (\$6.53/ccf)	32.65
Total Monthly Bill	55.55
<u>City of Willits</u>	
Fixed	60.42
Total Monthly Bill	60.42
<u>Ukiah Valley Sanitation District</u>	
Fixed	53.47
Flow-based (\$4.45/ccf over 3.4)	7.12
Total Monthly Bill	60.59
<u>City of Ukiah</u>	
Fixed	58.40
Flow-based (\$2.29/ccf)	11.45
Total Monthly Bill	69.85
<u>City of Rio Dell (current)</u>	
Fixed	73.94
Total Monthly Bill	73.94

1 - The City of Fort Bragg recently completed a utility rate study and Council approved rate recommendations. City is currently preparing a Proposition 218 notice.

Wastewater Capacity Fee

As part of the wastewater rate study, BWA also evaluated the City's wastewater capacity fee. The purpose of capacity fees is to recover the capital costs of facilities needed to serve growth and new customers. In establishing any fee or charge, achieving equity is one of the primary goals. In the case of capacity fees, this goal is often expressed as "growth should pay for growth". The fees must be reasonable and non-arbitrary and based on facility capital costs, user loads, and system capacity.

California Government Code Section 66013 contains the regulations regarding water and wastewater connection fees or capacity fees. It states that such fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fees or charges are imposed unless the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services is submitted to the electorate and approved by two-thirds vote. The calculations provided below demonstrate the reasonable cost of service of providing wastewater service to the City's customers.

Capacity Fee Methodology

BWA used a System Buy-in Method for calculating the City's wastewater capacity fee. The buy-in concept is based on the premise that new customers are entitled to service at the same price as existing customers. Existing customers, however, have already provided the facilities that will serve the new customers, including any costs of financing those facilities. Under this method, new customers pay an amount equal to the investment already made by existing customers in the facilities. This equity investment is divided by the number of customers (or customer equivalents) to determine the amount of payment required from the new customer to buy in to the utility at parity with existing customers. Once new customers have paid their fee, they become equivalent to existing customers and share the responsibility for existing facilities. When additional costs are incurred for system improvements, replacement, or expansion, all customers share the costs of such improvements.

This method is appropriate because new customers are buying into the existing collection system and into the wastewater treatment plant. The City recently upgraded its wastewater treatment plant to come into compliance with a cease and desist order from the Regional Water Quality Control Board and to expand capacity. The improvements to the treatment plant benefit both existing and new customers and the costs of the improvements should be shared by both groups of customers. The project will increase capacity of treatment plant from 0.3 million gallons per day (mgd) to 0.5 mgd average dry weather flow. The expanded capacity will serve growth in the community through buildout. The total cost of the wastewater treatment plant expansion and improvements is \$10.7 million. \$6 million of the construction cost is offset by a grant and the remaining cost of \$4.7 million will be financed through a loan from the Clean Water State Revolving Fund.

BWA calculated a buy-in cost to the City's collection system based on the replacement cost new less depreciation (RCNLD) value of existing facilities. This valuation method is based on the depreciated accounting book value of each asset escalated into current dollars based on the change in the Engineering News-Record (ENR) Construction Cost Index 20 Cities Average from each asset's original date. The ENR index is a widely-used index for determining construction cost inflation.

Capacity Fee Calculation

The City provided BWA with a list of wastewater system assets, the original construction or purchase price, useful life of the asset, and depreciation. In total, the RCNLD value of the wastewater system is about \$11.35 million. HDR Engineering, the engineer for the wastewater treatment plant upgrade, determined that the average dry weather flow buildout capacity of the treatment plant will be 0.5 million gallons per day (mgd). \$11.35 million divided by 0.5 mgd equals a capacity cost of \$22.70 per gallon of dry weather flow per day. The average dry weather capacity per EDU is about 230 gallons¹ which equals a wastewater capacity fee of \$5,220 (\$22.70/gpd x 230 gallons), see Table 8.

Table 8
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Wastewater Capacity Fee Calculation

Asset Description	Date of Construction or Purchase	Useful Life (Months)	Original Cost	Total Accumulated Depreciation	Remaining Book Value	RCNLD ¹
Infrastructure						
Misc Infrastructure	12/15/2010	360	2,750,571	(183,977)	2,566,594	2,823,613
Building and Improvements						
Corp Yard Fencing	12/15/2009	84	8,310	(3,561)	4,749	5,186
Land						
Misc Land	2000		502,543	NA	502,543	502,543
Mach & Equip						
RIVER PUMP	1/16/2004	84	5,505	(5,505)	0	0
SEWER PUMP	2/4/2004	84	15,974	(15,974)	0	0
SEWER MACHINE	3/18/2004	84	36,310	(36,310)	0	0
SEWER PUMP	6/1/2004	84	16,031	(16,031)	0	0
SEWER PUMP	7/9/2004	84	38,460	(38,460)	0	0
SEWER PUMP	3/20/2006	84	13,357	(13,183)	174	213
Fernbridge Tractor	4/25/2008	84	11,148	(7,964)	3,184	3,705
Aqua Sierra Controls	6/30/2008	60	73,342	(73,342)	0	0
2008 John Deere Tractor	3/15/2009	60	45,011	(34,008)	11,003	12,167
City Hall Heating Unit	11/9/2011	60	190	(38)	152	156
Vehicles						
1/2 2003 FORD F-351	8/30/2003	84	13,750	(13,750)	0	0
2008 Ford F-350	8/1/2008	60	12,386	(12,386)	0	0
1978 GMC Vactor Truck	5/6/2010	36	1,833	(1,833)	0	0
1993 Chevy S-10	7/28/2010	36	1,252	(1,252)	0	0
Construction in Progress						
CIP - Sewer Effluent Disposal	12/15/2012	480	3,291,939	0	3,291,939	3,300,683
Wastewater Treatment Plant (less grant)			<u>10,700,000</u>	<u>(6,000,000)</u>	<u>4,700,000</u>	<u>4,700,000</u>
Total Value of City Wastewater Facilities			\$17,537,910	(\$6,457,573)	\$11,080,337	\$11,348,265
Buildout dry weather flow (gallons/day)						500,000
Buy-in cost per gallon of flow						\$22.70
Average dry weather flow per EDU (gallons/day) ²						230
Wastewater capacity fee per EDU						\$5,220

1 - RCNLD is calculated by escalating the original cost to current dollars using the Engineering News Record Construction Cost Index 20 Cities Average.

2 - Calculated by BWA from information provided by HDR Engineering, Inc.

For new nonresidential customers, the City engineer should determine the EDU count of each new customer based on estimated wastewater flow and strength. The wastewater capacity fee for new nonresidential customers should be scaled to the EDU count.

¹Calculated by BWA from information provided by Craig Olson, Project Manager for the Wastewater Treatment Plant upgrade, HDR Engineering, Inc. The current dry weather flow at the plant is approximately 0.3 mgd, divided by 1,292 EDUs equals a capacity of 230 gallons per day per EDU.

Capacity Fee Survey

The City's current wastewater capacity fee is \$950 per EDU, the lowest in the region. The recommended capacity fee of \$5,220 is competitive with other local agencies. BWA conducted a capacity fee survey of the typical fees for new single family connections and found that the fees range up to \$12,240 (Ukiah Valley Sanitation District), see Table 9 and Figure 4.

Table 9
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Wastewater Capacity Fee Survey - Single Family Residential Home

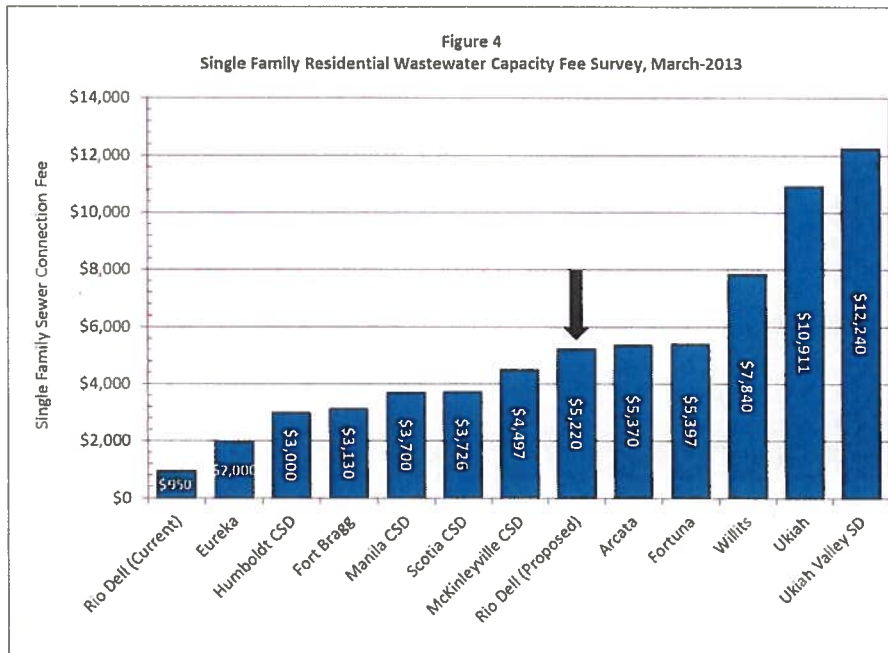
City of Rio Dell (Current)	950.00
City of Eureka	2,000.00
Humboldt Community Services District	3,000.00
City of Fort Bragg	3,129.59
Manila Community Services District ¹	3,700.00
Scotia Community Services District ²	3,726.00
McKinleyville Community Services District	4,497.00
City of Rio Dell (Proposed)	5,220.00
City of Arcata	5,370.00
City of Fortuna ³	5,397.00
City of Willits	7,840.00
City of Ukiah	10,911.00
Ukiah Valley Sanitation District ⁴	12,240.00

1 - District has a STEP sewer system.

2 - Typical capacity fee as shown in the District's Rules and Regulations, includes many sub-charges based on acreage.

3 - Assumes 17 fixture units for the typical home at a cost of 317.50 per fixture unit.

4 - Wastewater capacity fee for a two bedroom house.



Adjusting Capacity Fees

Capacity fees should be adjusted regularly to prevent them from falling behind the costs of constructing new facilities. Several methods can be used to adjust the capacity fees, including:

- ENR Construction Cost Index: ENR (Engineering News-Record) magazine publishes construction cost indices monthly for 20 major U.S. cities and an average of 20 cities around the U.S. These indices can be used to estimate the change in the construction cost of facilities. If the ENR Index has increased by three percent since the last capacity fee adjustment, the capacity fee should be increased by three percent.
- U.S., California, or regional consumer price index.
- Interest rate and borrowing costs: The interest and borrowing costs for debt issued to finance wastewater capital projects can be added to the capacity fee annually.

BWA recommends that the City adjust its capacity fees annually by the change in the ENR Construction Cost Index 20 Cities Average. This is the most appropriate index because it directly reflects construction costs. Suggested language for implementing this policy is:

Each year, commencing on ____ (m/d/y) ____ and continuing thereafter on each ____ (m/d) ____, the capacity fee shall be adjusted by an increment based on the change in the Engineering News-Record Construction Cost Index 20 Cities Average over the prior year. However, the City Council may at its option determine, by resolution adopted prior thereto, that such adjustment shall not be effective for the next succeeding year, or may determine other amounts as appropriate.

Capacity fees should also be reviewed in detail when updated information, such as a revised master plan or capital improvement program, is obtained, but not less than every five years.

Appendix A

Strength Classifications into Low, Domestic, Medium, and High Strength Dischargers

Low Strength	Banks & Financial Institutions Barber Shops Hair Salon (hair cutting only) Dry Cleaners Laundromats Offices - Business and Professional Offices - Medical/Dental (without surgery) Post Offices Retail Stores Schools Car Wash
Domestic Strength	Residential - All Appliance Repair Auto Dealers - without Service Facilities Nail Salons Pet Groomers Bars & Taverns - without dining Camp Ground or RV Park Churches, Halls & Lodges Fire Stations Hotels, Motels, B&Bs, and Vacation Rentals (W/O restaurant) Libraries Rest Homes Shoe Repair Shops Theaters Warehouses Car Washes - Self Service High Tech Medical Manufacturing Light Manufacturing/Industrial Mobile Home Park Gas Station Gym or Health Club Auto Dealers - with Service Facilities Machine Shops Service Stations, Garages, Auto Repair Shops
Medium Strength	Restaurants - W/O Dish Washer & Garbage Disposal Coffee Shops - W/O Dish Washer & Garbage Disposal Mini Marts - W/O Dish Washer & Garbage Disposal Mini Mart with Gas Pumps - W/O Dish Washer & Garbage Disposal Catering - W/O Dish Washer & Garbage Disposal Hotel/Motel with Restaurant Beauty Shops (hair cutting w/additional treatments) Hospitals - General, Convalescent & Veterinarian Medical Offices - with Surgery Dental Offices
High Strength	Restaurants - with Dish Washer or Garbage Disposal Coffee Shops - with Dish Washer or Garbage Disposal Catering - with Dish Washer or Garbage Disposal Bakeries Butcher Shops Fish Market/Shop Markets - with Dish Washer or Garbage Disposal Markets - with Bakeries or Butcher Shops Mini Marts - with Dish Washer or Garbage Disposal Wineries Cheese Makers Dairy Products (milk producers, yogurt, ice cream maker) Specialty Foods Manufacturing (e.g., olive oil maker) Ice Cream Shop Tasting Rooms Spa with Various Beauty Treatments Funeral Homes/ Mortuary

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532



For Meeting of: June 18, 2013

To: City Council

From: Kevin Caldwell, Community Development Director 

Through:  Jim Stretch, City Manager

Date: June 7, 2013

Subject: Non Conforming Regulations Text Amendment
Section 17.30.160 Rio Dell Municipal Code

Recommendation:

1. Receive staff's report regarding amending the Non-Conforming Regulations, Section 17.30.160 of the Rio Dell Municipal Code;
2. Continue the public hearing, receive public input and close the public hearing;
3. Adopt Ordinance No. 301-2013 amending the Non-Conforming Regulations, Section 17.30.160 of the Rio Dell Municipal Code (RDMC);
4. Direct the City Clerk, within 10 days after adoption of the Ordinance, to post an adoption summary of the Ordinance with the names of those City Council members voting for or against, or otherwise voting in at least three (3) public places and to post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance pursuant to Section 36933(a) of the California Government Code.

Background/Summary

At your meeting of June 4, 2013 your Council introduced (first reading) Ordinance No. 301-2013 amending the Non-Conforming Regulations, Section 17.30.160 of the Rio Dell Municipal Code (RDMC). The proposed amendments are as follows:

~~Section 17.30.160(3)(a) An existing owner-occupied one-story structure in the town-center zone may be restored to its original condition or may be expanded within lot setbacks.~~

Section 17.30.160(3)(a) A nonconforming owner-occupied residence that is destroyed or damaged by any casualty, may be restored within two (2) years after such destruction or damage but shall not be enlarged except as provided in Section 17.30.160(1)(a) of this Code.

~~Section 17.30.160 (5) Ordinary maintenance and repair may be made to any nonconforming use or building; provided, that such maintenance and repair does not exceed 25 percent of the actual value in any one year.~~

Section 17.30.160 (5) Ordinary maintenance and repair may be made to a nonconforming structure or a structure in which a nonconforming use is conducted.

The public hearing was opened and testimony was provided regarding the proposed amendments. The public hearing was continued to this meeting.

As evidenced in the Staff Report prepared for the June 4, 2013 meeting, the process for the Ordinance has been followed and staff believes the required General Plan Consistency finding as required by Section 65855 of the California Government Code can be made.

Based on the nature of the project, staff determined that the project is Statutorily Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations. Pursuant to Section 15061(b) (3) of the CEQA Guidelines this exemption is covered by the general rule that CEQA applies only to projects which have the potential for causing a **significant** effect on the environment. Where it can be seen with certainty that there is no possibility that the project in question may have a significant effect on the environment, the project is not subject to CEQA. Based on the nature of the proposed amendment, staff believes there is no evidence to suggest that the amendment will have a significant effect on the environment.

Financial Impact

The City is responsible for the costs associated with the proposed amendment. The cost is insignificant and will not result in additional budget expenditures or revisions.

Attachments:

1. Ordinance No. 301-2013 amending Section 17.30.160 of the Rio Dell Municipal Code.
2. Prior and Post Adoption Summaries.

ORDINANCE NO. 301 – 2013



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIO DELL
AMENDING THE NON-CONFORMING REGULATIONS, SECTION 17.30.160 OF THE
RIO DELL MUNICIPAL CODE:

THE CITY COUNCIL OF THE CITY OF RIO DELL ORDAINS AS FOLLOWS:

WHEREAS staff is often contacted by lending institutions regarding the ability to rebuild non-conforming uses in the event they are destroyed or damaged by fire, flood or an earthquake; and

WHEREAS non-conforming uses are those uses which were legally permitted but are no longer identified as an allowed use in the zone they are located or pre-existed prior to the effective date of the City's zoning regulations; and

WHEREAS the current non-conforming regulations only allow the restoration or reconstruction of non-conforming uses so long as the long as the damage does not exceed 60% or more of the current market value of the structure; and

WHEREAS there is an exception for owner-occupied, one story structures in the Town Center zone that allows the restoration or reconstruction of owner occupied single story homes in the Town Center zone, regardless of the degree of damage; and

WHEREAS staff estimates that there are *at least* 25 – 30 legal non-conforming residential uses throughout the City; and

WHEREAS the inability to rebuild these non-conforming uses (residences) that are damaged more than 60% of the current market value of the structure could pose a financial hardship not only on the owner's but for the lenders as well; and

WHEREAS the City's Housing Element contains policies that encourage the maintenance, enhancement and improvement of the City's housing stock; and

WHEREAS another issue related to non-conforming uses that has been brought to staff's attention relates to a property owner's ability to do ordinary repairs and maintenance; and

WHEREAS the current non-conforming provisions, Section 17.30.160(5), limit the maintenance and repairs to no more than 25% of the actual value of the structure in any one year; and

WHEREAS with the exception of the City of Ferndale, all other local jurisdictions allow the maintenance and repair of non-conforming uses and structures without limitation; and

WHEREAS the use (for example residential uses in commercial zones), may be non-conforming, the structure itself could be used for future commercial uses; and

WHEREAS many times former residences are converted to office uses and to discourage the maintenance and repairs to existing buildings is not in the best interest of the City

WHEREAS the City has reviewed and processed the proposed amendments in conformance with Sections 65350 – 65362 of the California Government Code; and

WHEREAS the City has reviewed and processed the proposed amendments in conformance with Section 17.30.010 of the City of Rio Dell Municipal Code; and

WHEREAS the City finds that based on evidence on file and presented in the staff report that the proposed amendments are consistent and compatible with the General Plan and any implementation programs that may be affected; and

WHEREAS the proposed amendments have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, BE IT RESOLVED that the City Council finds that:

1. The proposed amendments are consistent with the General Plan and any applicable specific plan; and
2. The proposed amendments are Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Rio Dell does hereby ordain as follows:

Section 1. The Non-Conforming Regulations, Section 17.30.160 of the Rio Dell Municipal Code is hereby amended as follows:

17.30.160 Nonconforming uses.

The lawful use of lands or buildings existing on the effective date of the application of these regulations to the subject property, although such use does not conform to the regulation applied to such subject property, may be continued, except as provided herein.

(1) No such use or building shall be enlarged, increased or structurally altered, nor be extended to occupy a greater area than that existing on the effective date of the application of these regulations to the subject property, except as follows:

(a) A nonconforming building may be enlarged, increased or structurally altered where (i) such building modification is required for reason of public health or safety, or (ii) where such modification will not increase the degree of nonconformance of the subject building with respect to the height and area regulations of the zone in which it is located.

(2) Any use for which a use permit is required by these regulations shall be considered a nonconforming use until a use permit is obtained.

(3) If 60 percent or more of the market value of any such land or building is destroyed, as determined by the building official, then the property shall become subject to the zoning regulations applicable to the principal zone, and any subsequent use or buildings shall be in accordance with such regulations, with the following exception:

~~(a) An existing owner-occupied one-story structure in the town center zone may be restored to its original condition or may be expanded within lot setbacks.~~

(a) A nonconforming owner-occupied residence that is destroyed or damaged by any casualty, may be restored within two (2) years after such destruction or damage but shall not be enlarged except as provided in Section 17.30.160(1)(a) of this Code.

(4) Any interruption of a nonconforming use, or the use of a nonconforming building, which continues for 12 months or more shall be deemed to be an abandonment of such

use, and subsequent use of buildings shall be in accordance with the regulations applicable to the subject property.

~~(5) Ordinary maintenance and repair may be made to any nonconforming use or building; provided, that such maintenance and repair does not exceed 25 percent of the actual value in any one year.~~

(5) Ordinary maintenance and repair may be made to a nonconforming structure or a structure in which a nonconforming use is conducted.

(6) Any use coming within the provisions of RDMC 17.30.050, concerning domestic animals appurtenant to residential uses, shall, after the expiration of 18 months from the effective date of the ordinance codified in this section, conform to the provisions of RDMC 17.30.050. [Ord. 252 § 7.60, 2004.]

Section 2. Severability

If any provision of the ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

Section 3. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

Section 4. CEQA Compliance

The City Council has determined that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines. Due to the nature of the proposed code revisions, there is no evidence that any impact to the environment would occur as a result of adoption of the Ordinance.

Section 5. Effective Date

This ordinance becomes effective thirty (30) days after the date of its approval and adoption.

I HEREBY CERTIFY that the forgoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Rio Dell on June 4, 2013 and furthermore the forgoing Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the 18th of June 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jack Thompson, Mayor

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Ordinance No. 301-2013 adopted by the City Council of the City of Rio Dell on June 18, 2013.

Karen Dunham
City Clerk, City of Rio Dell

Public Notice

City of Rio Dell City Council

SUMMARY FOR POSTING PRIOR TO ADOPTION OF ORDINANCE

(The summary shall be published or posted at least 5 calendar days prior to the City Council meeting)

Summary

On **Tuesday, June 18, 2013 at 6:30 p.m.** or as soon thereafter as the matter can be heard, the Rio Dell City Council will hold a public hearing in the City Council Chamber at City Hall to consider the matter listed below. The City Council is scheduled to adopt the Ordinance listed below. If you have any questions regarding the proposed project, contact Kevin Caldwell, Community Development Director at (707) 764-3532.

ORDINANCE NO. 301-2013

Non-Conforming Use Regulations: Amending Section 17.30.160 Non-Conforming Regulations to allow property owners to repair/reconstruct non-conforming owner-occupied residences should they be destroyed or damaged by fire, flood or an earthquake and to allow more than 25% of the actual value of the structure to be repaired within one year.

A certified copy of the full text of the Ordinance is posted in the office of the City Clerk. General questions regarding the Ordinance, the planning process, submission of materials and information not specific to this project may be obtained from the City, 675 Wildwood Avenue, Rio Dell, CA. 95562; telephone (707) 764-3532.

POSTED: June 12, 2013

Public Notice

City of Rio Dell City Council

SUMMARY FOR POSTING AFTER ADOPTION OF ORDINANCE

(The summary shall be published or posted within 10 calendar days after the adoption of the ordinance)

Summary

On **Tuesday, June 18, 2013 at 6:30 p.m.**, the Rio Dell City Council held a public hearing in the City Council Chamber at City Hall to consider the matter listed below and adopted Ordinance No. 301-2013 amending Section 17.30.160 of the Rio Dell Municipal Code (RDMC), Non-Conforming Regulations to allow property owners to repair/reconstruct non-conforming owner-occupied residences should they be destroyed or damaged by fire, flood or an earthquake and to allow more than 25% of the actual value of the structure to be repaired within one year.

ORDINANCE NO. 301-2013


Non-Conforming Use Regulations: Amending Section 17.30.160 Non-Conforming Regulations to allow property owners to repair/reconstruct non-conforming owner-occupied residences should they be destroyed or damaged by fire, flood or an earthquake and to allow more than 25% of the actual value of the structure to be repaired within one year.


A certified copy of the full text of the Ordinance is posted in the office of the City Clerk. General questions regarding the Ordinance, the planning process, submission of materials and information not specific to this project may be obtained from the City, 675 Wildwood Avenue, Rio Dell, CA. 95562; telephone (707) 764-3532.

POSTED: June 19, 2013

For Meeting of: June 18, 2013

To: City Council

From: Kevin Caldwell, Community Development Director 

Through:  Jim Stretch, City Manager

Date: June 14, 2013

Subject: Circulation Element; General Plan Amendment

Recommendation:

That the City Council:

1. Re-Open the public hearing, receive public input, discuss the Circulation Element, adopt Resolution No. 1204-2013 approving the Circulation Element; or
2. Continue the Public Hearing and direct staff to make any changes and bring the Circulation Element back to your Council for adoption at the meeting of July 2, 2013

Background and Discussion

Staff presented the Draft Circulation Element at your June 4th meeting. Staff's intent was to allow the Council adequate time to review the document prior to the next meeting.

Again, the Circulation Element is one of seven mandated elements of the General Plan. As previously reported, the current Circulation Element was adopted in 1977.

The Circulation Element identifies the guiding principles for moving people and goods within the City and identifies the infrastructure necessary to assure that the transportation network will serve the City at General Plan build-out.

Attachments

Attachment 1: Resolution No. 1204-2013 approving and adopting the Circulation Element.

RESOLUTION NO. CC 1204 – 2013



RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIO DELL ADOPTING THE
CIRCULATION ELEMENT:

WHEREAS the current Circulation Element was adopted in 1977; and

WHEREAS the Circulation Element is one of seven mandated elements of the General Plan; and

WHEREAS in 2010 the Governor's Office of Planning and Research (OPR), published the *Update to the General Plan Guidelines: Complete Streets and the Circulation Element*; and

WHEREAS Assembly Bill 1358 (AB 1358, Chapter 657, Statutes of 2008), the California Complete Streets Act, required OPR to amend the *2003 General Plan Guidelines* to provide guidance to local jurisdictions on how to plan for multimodal (automobile, public transit, bicycle and pedestrian) transportation networks in general plan circulation elements; and

WHEREAS Staff considered and addressed the changes in preparing the Circulation Element; and

WHEREAS the City has reviewed and processed the proposed amendments in conformance with Sections 65350 – 65362 of the California Government Code; and

WHEREAS the City finds that based on evidence on file and presented in the staff report, the proposed amendments are deemed to be in the public interest; and

WHEREAS the City finds that based on evidence on file and presented in the staff report that the proposed amendments are consistent and compatible with the rest of the General Plan and any implementation programs that may be affected; and

WHEREAS the proposed Circulation Element has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

WHEREAS the City has determined that the Circulation Element is Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations.

WHEREAS the Planning Commission has reviewed the Circulation Element and recommends that the City Council adopt the proposed Circulation Element

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Rio Dell:

1. Finds that the adoption of the Circulation Element is in the public interest and consistent with an overall comprehensive view of the General Plan; and
2. Finds that based on evidence on file and presented in the staff report that the potential impacts of the proposed amendment has been assessed and have been determined not to be detrimental to the public health, safety, or welfare; and
3. Adopts the Circulation Element.

I HEREBY CERTIFY that the forgoing Resolution was PASSED and ADOPTED at a regular meeting of the City Council of the City of Rio Dell on June 18, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jack Thompson, Mayor



ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Resolution No. CC 1204-2013 adopted by the City Council of the City of Rio Dell on June 18, 2013.

Karen Dunham
City Clerk, City of Rio Dell

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532



To: Honorable Rio Dell City Council
From: Graham Hill, Chief of Police 
Through: Jim Stretch, City Manager 
Date: June 18th, 2013
Subject: Nuisance Abatement Ordinance

Council Action

1. Conduct first public reading of the proposed Nuisance Ordinance and take public comment.

Background

Several months ago it came to my attention that some of the citations within the current Nuisance Ordinance were outdated or otherwise incorrect. This resulted in a legal review of the ordinance and a recommendation to adopt an updated ordinance. Ultimately the ordinance was redone. After several internal drafts were reviewed by staff and the city's attorney a 1st draft to be presented to the City Council has been completed and was presented at a study session on April 23rd, 2013. At that study session the issue of how appeal hearings were to be handled was discussed and staff was directed to amend that portion of the draft so the hearing officer was not the City Manager or another employee.

Another draft was brought back on June 4th with a recommendation for three city council members to act as the hearing committee. The City Attorney had previously expressed concern over three elected officials serving on the committee because of possible conflicts with Brown Act procedures regarding the city council. I did not address that issue at the last study session on June 4th. To address that concern a hearing committee model has been recommended that includes two city council members and the third member of the committee is the City Manager. This alleviates the Brown Act issues and provides for a three person committee to avoid a non decision with no majority.

This newest version has gone to the City Attorney for additional review, and should be received back by the next scheduled city council meeting (June 18th).

Budgetary Impact

No impact at this time.

Recommendation

Conduct first reading of nuisance ordinance and accept public comment
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Attachments

1. Proposed Nuisance Abatement Ordinance.

Chapter 8.10

NUISANCES

Article 1. Nuisances Generally

8.10.010. Application.

The provisions of this chapter shall apply to all property throughout the City of Rio Dell wherein any of the conditions, hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this chapter, but which is duly authorized under any other City, state or federal law, shall not be deemed to violate this chapter.

8.10.020. Definitions.

For the purposes of this chapter, the following words shall have the specified meanings:

(A) **Blight.** For purposes of this Code, visual blight is any unreasonable, non permitted or unlawful condition or use of real property, Premises or of building exteriors which by reason of its appearance as viewed from the public right-of-way, is detrimental to the property of others or to the value of property of others, offensive to the senses, or reduces the aesthetic appearance of the neighborhood. Visual blight includes, but is not limited to, the keeping, storing, depositing, scattering over or accumulation on the Premises any of the following:

- (1) Lumber, junk, trash, debris, scrap metal, rubbish, packing materials, building materials.
- (2) Abandoned, discarded or unused objects or equipment such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, automotive parts and equipment.
- (3) Abandoned, wrecked, disabled, dismantled or inoperative vehicles or parts thereof except inoperative vehicles that are not abandoned and are in an active state of renovation or restoration. For purposes of this article, “active state of renovation or restoration” means that the vehicle is actively being restored or renovated in a manner intended to make the vehicle operational, and shall not include restoration or renovation that solely improves the interior or exterior appearance, but not the operation, of the vehicle. A vehicle shall only be permitted to be in an active state of renovation or restoration for a period that shall not exceed ninety days, whether consecutive or non-consecutive, out of any twelve month period.
- (4) Stagnant water or excavations.
- (5) Any personal property, object, device, decoration, design, fence, structure, clothesline, landscaping or vegetation which is unsightly by reason of its condition or its inappropriate location.

(6) Vehicles parked on any surface other than an “improved surface” or “driveway” as those terms are defined.

(7) Any condition of a building or structure deemed to be unsafe or that in the discretion of the City Manager or his/her designee, or the Department Head, would constitute a threat to public safety, health, or welfare, or poses a security problem by reason of dilapidation, fire hazard, disaster, damage or other similar occurrence specified in this Code or any other applicable law.

(8) Any condition of a building or portion thereof which constitutes a substandard building, as defined in Health and Safety Code Section 17920.3 or its successor.

(9) Filling of any swimming pool with water prior to the final safety inspection required by the California Code of Regulations, conducted by City inspectors and before such final inspection has been noted on the permit card obtained from the City.

(B) City. The City of Rio Dell, a municipal corporation of the State of California.

(C) City Council. The duly elected City Council for the City of Rio Dell.

(D) City Council Member. Any currently seated member of the City Council for the City of Rio Dell.

(E) City Manager. The City Manager for the City of Rio Dell.

(F) Code or City Code. The “Code” shall mean the Municipal Code for the City of Rio Dell.

(G) Code Compliance Administrator. The City Manager and the authorized representative(s) of the City Manager.

(H) Department Head. The Police Chief, the City Manager, and the City Attorney, and their authorized representative(s).

(I) Highway. Any road, street, alley, way or place of whatever nature, publicly maintained and opened to the use of the public for purposes of vehicular travel. Highway includes City streets.

(J) Inoperative vehicle. Any vehicle which cannot be legally operated on the street because of lack of current registration or, lack of an engine, transmission, wheels, tires, windshield or any other part or equipment necessary to operate on public streets and/or highways.

(K) Junk. Any cast-off, damaged, discarded, junked, obsolete, salvage, scrapped, unusable, worn-out or wrecked object, thing or material, including but not limited to those composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fiber, glass, plaster, plaster of parts, rubber, terra cotta, wool, cotton, cloth, canvas, wood, metal, sand, organic matter or other substance.

(L) Junkyard. Any Premises on which any junk is abandoned, bailed, bartered, bought, brought, bundled, deposited, disassembled, disposed of, exchanged, handled, kept, stored or transported, regardless of whether or not such activity is done for profit.

(M) Notice and Order. A Notice and Order is legal notice which details structural or technical Code violations such as illegal construction, conversions, alterations, illegal plumbing, mechanical or electrical installations, dangerous buildings, substandard housing or similar.

(N) Owner. Owner of record of real property, occupant, lessee, or interested holder in same, as the case may be including the owner of real property whereon a vehicle(s) or part(s) thereof is located.

(O) Person. Any individual, group of individuals, firm, entity or corporation owning, occupying or using any Premises.

(P) Planning Commission. The Planning Commission for the City of Rio Dell.

(Q) Police Chief. The Police Chief for the City of Rio Dell.

(R) Premises. Any real property or improvements thereon located in the City of Rio Dell.

(S) Service Station. Any Premises upon which the improvements are designed and built for the primary purpose of selling to or providing others with fuels for internal combustion engines or motor vehicles, whether or not providing related automotive maintenance and repair service.

(T) Special Assessment Lien. A special assessment lien is a lien placed on real property and is collected by the county tax assessor.

(U) Vehicle. Any device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

8.10.030. Nuisances.

It is hereby declared unlawful and a public nuisance per se for any person owning, leasing, occupying and/or having charge or possession of any Premises or land in this City to permit, allow, or maintain such Premises or land such that any one or more of the following conditions or activities exist:

(A) Any condition recognized in law or equity as constituting a public nuisance including, without limitation, any condition on or use of property which would constitute a nuisance as defined in California Penal Code §§ 370, 371 and/or 11225;

(B) Any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or

welfare of the public;

(C) Any condition that is in violation of any duly enacted ordinance of the Rio Dell Municipal Code, or resolution or lawful order promulgated by authorized City officials;

(D) Any condition in violation of Chapters 8, 15, and 17 of this Code, including any condition in violation of any written design finding, including design standard, design guideline, or development standard that may be adopted by resolution or ordinance from time to time by the City Council or the planning commission, or any condition imposed on any entitlement, permit, contract, or environmental document issued or approved by the City;

(E) Any condition in violation of Chapter 8.25 of this Code entitled "Premises Used for Drug Related Activity."

(F) Anything defined as a nuisance pursuant to state and federal law including but not limited to California Civil Code Section 3479 et seq.;

(G) Any condition in violation of the weed and rubbish abatement laws defined at Government Code Sections 39501 et seq. and 39560 et seq. as enacted or hereafter amended and enforced by City ordinance and resolutions;

(H) Any vacant, unoccupied or abandoned building or structure that is not reasonably secured against uninvited entry or that constitutes a fire hazard, or is in a state of unsightly or dangerous condition so as to constitute a blighted condition detrimental to property values in the neighborhood or otherwise detrimental to the health, safety and welfare of the public;

(I) Any condition that constitutes an attractive nuisance; those objects or conditions that, by their nature may attract children or other curious individuals including, but not limited to, unprotected hazardous or unfilled pools, ponds, including pools or ponds that have not been properly barricaded, ice boxes, refrigerators or excavations;

(J) Any condition that constitutes a visual Blight.

8.10.040. Responsibility for Property Maintenance.

(A) Every owner of real property within the City is required to maintain such property in a manner so as not to violate the provisions of this chapter and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property.

(B) Every occupant, lessee, tenant or holder of any interest in property, other than as owner thereof, is required to maintain such property in the same manner as is required of the owner thereof, and the duty imposed on the owner thereof shall in no instance relieve those persons referred to from the similar duty.

Article 2. Enforcement

8.10.050. Authority.

(A) The City Manager is hereby authorized to administer and enforce all of the provisions of this chapter. In accordance with approved procedures, the City Manager may assign said authority to Department Heads and/or employ qualified officers, inspectors, assistants, and other employees as shall be necessary to carry out the provisions of this chapter. The authority of the City Manager to enforce the provisions of this chapter is independent of and in addition to the authority of other City officials to enforce the provisions of any other chapter of the City Code.

(B) Pursuant to California Code of Regulations, Title 25, Section 52, the procedures contained in this chapter are deemed to be equivalent for the purposes intended by, and may be used in lieu of, the regulations and procedures for abatement contained in Article 6 of Subchapter 1 of Chapter 1 of Division 1 of Title 25 of the California Code of Regulations which addresses mobile homes and parks.

(C) Nothing in this chapter shall be construed to limit the authority of the Police Chief of the City to enforce all laws within the Police Chief's jurisdiction.

8.10.060. Right of Entry.

(A) Whenever it is necessary to make an inspection of any Premises to enforce the provisions of this chapter, and to the extent authorized by law, the Code Compliance Administrator or a Department Head authorized by the Code Compliance Administrator may enter on such Premises at all reasonable times to inspect the same or to perform any duty imposed upon him/her by this Code, subject to the requirements of Amendment IV of the United States Constitution and any other provisions of applicable law.

(B) Whenever practicable, the Code Compliance Administrator or the Department Head shall contact the occupant of such Premises 24 hours prior to entry and inform the occupant of the reasons for such entry onto such property, and if the occupant is other than the owner, the Code Compliance Administrator or the Department Head shall also, if practicable, contact such owner. This does not prevent entering the property within the 24 hours of notification with the owner or occupants permission.

(C) If entry onto any Premises is denied by the owner or occupant of such Premises, or by any third party, the Code Compliance Administrator or authorized Department Head shall have recourse to every remedy provided by law to secure peaceable entry on such Premises to perform the duties required by this chapter.

8.10.070. Violations and Penalties.

(A) It shall be unlawful for any person, firm, corporation, or other entity to violate any provision of this chapter. Any person, firm, corporation, or other entity, whether as owner, lessee, sub lessor, sub lessee, or occupant of any Premises that violates the provisions of this chapter or any order issued pursuant to this chapter shall be subject to any or all of the following:

(1) Such person shall be subject to summary or administrative abatement of the nuisance by the City, and be subject to fines, civil penalties, fees and costs, including reasonable attorney fees imposed by the City pursuant to the summary or administrative abatement procedures contained in the City Code or any other provisions of law;

(2) Such person shall be guilty of a misdemeanor for each day such violation continues, and upon conviction thereof, shall be punished for each violation by a fine not to exceed one thousand dollars, or by imprisonment of not longer than six months, or both for each violation;

(3) Such person shall be prosecuted in a civil action, criminal action, or both brought by the City. The City Attorney or other authorized legal representative may bring an action in a court of competent jurisdiction to enjoin or prosecute any nuisance violation of this chapter, or violation of any other ordinance of the City;

(4) Each and every day that any such violation continues to exist shall constitute a continuing and separate offense.

8.10.080. Additional Enforcement.

Nothing in this chapter shall be deemed to prevent the City from commencement of any available administrative, civil and/or criminal proceeding to abate a nuisance pursuant to all applicable provisions of law as an alternative and/or in addition to any enforcement proceedings set forth in this chapter.

8.10.090. Cumulative Remedies.

The remedies set forth in this chapter include summary and administrative abatement, administrative citations, civil actions, criminal actions and all other remedies provided for by law. All remedies set forth in this chapter and in all City ordinances for the abatement or punishment of any violation thereof, are cumulative and may be pursued alternatively or in combination. Provisions of this Code are to be supplementary and complementary to all of the City ordinances, the Rio Dell Municipal Code, state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City to abate any and all nuisances and to enforce its ordinances.

8.10.100. Permits Required.

When a permit is required to correct a Code violation pursuant to a Code compliance action, the property owner shall complete the permit, including all inspections, corrections, and work in accordance with a timeline established by the Code Compliance Administrator. In establishing the timeline the Code Compliance Administrator shall provide a time frame, that in his or her judgment, is reasonable to expeditiously complete the permit. Failure to strictly adhere to the established timeframe shall be deemed a continuing violation subject to the remedies established in this article. Nothing in this chapter shall be construed to relieve the violator from payment of any and all costs incurred by the City in enforcing and/or causing the abatement of any violation of the City of Rio Dell Municipal Code.

Article 3. Summary Abatement

8.10.110. Summary Abatement.

(A) The City may immediately abate any nuisance or violation of this chapter that poses a clear and imminent danger to, or requires immediate action to prevent or mitigate the loss or impairment of, life, health, property, or essential public services. The City may perform this abatement without providing prior notice or hearing to the owner or occupier of the offending Premises. Such summary abatement may proceed only upon the authorization of the manager and the City Attorney, or their respective designees. The abatement shall include all actions necessary to secure the Premises to prevent further occurrences of the nuisance.

(B) The owner and/or occupier of the Premises or the persons creating, causing, committing, or maintaining the nuisance shall be subject to any administrative fines, penalties, fees and costs, including reasonable attorney fees, imposed or incurred by the City pursuant to this chapter.

(C) Any abatement performed by the City pursuant to this section shall be at the expense of the owner and/or occupier of the Premises or the persons creating, causing, allowing, permitting, committing, or maintaining the nuisance. The City shall recover its expenses pursuant to the special assessment lien procedures contained in this Code or any other applicable provision of law.

(D) As soon as practicable following completion of the abatement, the Code Compliance Administrator or the Department Head shall issue a notice of violation and/or Notice and Order in accordance with this chapter. Persons receiving such notice shall be entitled to all hearing rights as provided herein.

(E) If a structure is deemed untenable pursuant to California Civil Code § 1941.1 and the Code compliance officer determines that the structure is in such a condition as to make it immediately dangerous to the health and safety of the occupants or public, it shall be ordered to be vacated and posted as unsafe.

Article 4. Administrative Abatement

8.10.120. Commencement of Proceedings.

(A) Whenever the Code Compliance Administrator or the Department Head has inspected or caused to be inspected any Premises or condition and has found and determined that such Premises or condition are in violation of this chapter, and that such violation does not pose an immediate danger to health or safety, the City Manager or his/her designee may commence proceedings to cause abatement of the nuisance as provided herein. When the City Manager or his/her designee, or Department Head has found that a violation of this chapter poses an immediate danger to health or safety, the City Manager or his/her designee, or Department Head may pursue any remedies available under this chapter or by law, including, but not limited to, summary abatement or administrative citation.

(B) Once proceedings have been commenced pursuant to this chapter to declare a public nuisance, no Premises or building shall be deemed to be in compliance with this chapter solely because such building or Premises thereafter becomes occupied or unoccupied.

8.10.130. Notice of Violation.

(A) Upon determination by the Code Compliance Administrator or the Department Head that a premise is in violation of this chapter, and a notice of violation and/or a Notice and Order has not been issued against the same Premises, or the same property owner but at a different premise, address or location, within the City, within the last twelve months, and that the violation does not create an immediate danger to health or safety, City Manager or his/her designee or the Department Head may issue a notice of violation to the owner of record of the Premises and to the occupant of the Premises, if any. The notice of violation shall contain:

- (1) The name and address of the person, firm, or corporation in violation, and the street address of the property where the violation is present;
- (2) A statement specifying the condition(s) which constitute a nuisance;
- (3) A statement explaining which specific Code sections has been violated;
- (4) The range of the administrative, civil and/or criminal actions and monetary penalties, as described herein, that the City may impose for such violations if not corrected;
- (5) An order to correct the violation within a date certain, said date which shall be specified on the notice of violation and determined by the specific violation; and
- (6) A statement informing the recipient of the name and office telephone number of the person to contact should the recipient desire to explain why he or she believes
 - (a) the Premises should not be declared to be a public nuisance and abated,

(b) penalties should not be assessed, and

(c) the costs of such abatement should not become a charge and lien against the Premises. The Department Head may rescind or modify the notice of violation based on substantive evidence presented by the recipient.

8.10.140. Stop Work Order.

If the violation is related to a permit, license or other approval of a project, the notice of violation may be accompanied by a stop work order which orders the recipient to stop immediately any and all work on the project that is subject to the permit, license or approval until the violation is corrected.

8.10.150. Service of Notice of Violation.

A copy of the notice of violation, and any amended or supplemental notices, shall be served either by personal delivery or by First Class U.S. mail, postage prepaid, upon the record owner at the address as it appears on the latest equalized assessment roll of Humboldt County, and upon the occupant of the Premises, if any. If neither of these methods result in the notice being served upon the record owner and any occupants after reasonable attempts to serve, a copy of the notice shall be posted on the Premises.

8.10.160 Notice and Order—Structural and Technical

Notice and Orders are primarily used for structural or technical Code violations such as illegal construction, conversions, alterations, illegal plumbing, mechanical or electrical installations, dangerous buildings, substandard housing or similar. When issued, the violation must be remedied in thirty calendar days, unless there is an immediate danger risk. If there is an eminent threat of danger the violation must be remedied immediately.

(A) Grounds for Issuance. A Notice and Order may be issued under any of the following circumstances:

- (1) When a notice of violation has been served, and the specified time has passed without adequate correction and abatement of the violation;
- (2) When a stop work order has been issued but has not been complied with;
- (3) When the City has performed a summary abatement pursuant to this chapter;
- (4) When the same type or character of violation has been committed by the same person, or on the same Premises, or a notice of violation, an administrative citation, or a Notice and Order has been served on the same person, or on the same Premises, within

the past twelve months.

(B) Contents of Notice and Order. A Notice and Order shall contain the following:

- (1) The name and address of the person, corporation, or entity in violation, and the street address of the property where the violation is present;
- (2) A statement specifying the condition(s) which constitute a violation and nuisance;
- (3) A statement explaining which specific Code section(s) have been violated;
- (4) A statement informing the recipient of the number of days from the date of the Notice and Order the recipient has to voluntarily abate the violation and nuisance;
- (5) A statement informing the recipient of his or her right to appeal the determination to a hearing officer by filing with the City Clerk within ten calendar days from the date of the Notice and Order, and on a form available from the City of Rio Dell, a written statement requesting a hearing and providing a factual and specific explanation of:
 - (a) why the Premises should not be declared to be a public nuisance and abated; and
 - (b) why the costs of such abatement should not become a special assessment lien against the Premises;
- (6) A statement informing the recipient of the Notice that there is a fee, which is set by resolution by the City Council of the City of Rio Dell that must be deposited at the time an appeal is filed.
- (7) A statement that if the person, corporation or entity fails to abate the violation and nuisance or fails to file within ten calendar days, a request for an appeal hearing, the Notice and Order shall be final and not subject to judicial review, and all persons served with such notice shall be deemed to have consented to the abatement of the nuisance and that, at the election of the City, the City will abate the nuisance and the costs of such abatement may be charged against the Premises and may be recorded as a special assessment lien against the Premises.

(C) Service of Notice and Order.

- (1) **Persons Entitled to Service.** The Notice and Order shall be served upon the owner of the Premises, any occupants of the Premises, and any other person, corporation, or entity in violation. If the City proposes to impose a special assessment lien on the property, the City official issuing the Notice and Order shall also serve one copy on each of the following if known or disclosed from official public records:

(a) the holder of any mortgage, deed of trust, or other encumbrance of record;
and

(b) the owner or holder of any lease of record. The failure of the City official issuing the order to serve any person required to be served shall not invalidate any proceedings under this chapter or relieve any person who was duly served from any duty or obligation imposed on him/her by the provisions of this section.

(2) Method of Service. Unless otherwise provided in this section, service of a Notice and Order shall be made by personal service or by First Class U.S. mail, postage prepaid with confirmation of delivery by the U.S. Postal Service. Service on any property owner in violation is deemed complete when it is served or delivered at the address listed by the property owner on the latest equalized assessment roll of Humboldt County, or as known to the City official issuing the order. If personal service or service by mail with confirmation of delivery is not reasonably feasible, service of the Notice and Order may be made by posting the notice on the subject Premises and sending a copy by regular United States mail service. Service posting in the manner herein provided shall be effective on the date of posting. As an alternative, substituted service of the Notice and Order may be made as follows:

- (a)
 - (i) By leaving a copy during usual business hours at the recipient's business with the person who is apparently in charge, and then mailing a copy by first-class mail to the recipient at the address where the copy was left; or
 - (ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and then mailing a copy by first-class mail to the recipient at the address where the copy was left.
- (b) If the party entitled to service has a property manager or rental agency overseeing the Premises, substituted service may be made as set forth in above upon the property manager or rental agency.
- (c) Substituted service may be made by posting the Notice and Order on the Premises and mailing a copy of the Notice and Order to the person, corporation, or entity in violation at the address of the property on which the violation has occurred or is occurring.
- (d) If the person, corporation, or entity in violation or other person entitled to service cannot be located or service cannot be made as set forth in this section, service may be made by publication in a newspaper of general circulation in Humboldt County. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

(D) Record. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.

8.10.170. Appeal Hearing—Notice and Order.

(A) Payment of Appeal Fee. Any person, corporation, or entity seeking to appeal a Notice and Order shall be required to pay to the City, at the time the appeal is requested, a nonrefundable appeal fee to be set by resolution of the City Council. The appeal fee is intended to cover the costs, expenses, and City employees' time incurred by the City in processing, preparing for, and hearing of the appeal. No appeal request is valid unless accompanied by the appeal fee or a City hardship waiver is granted.

(1) **Hardship Waiver.** If the appealing party establishes to the satisfaction of the City Manager or designee, by means of tax returns, pay stubs or other similar documentary evidence, and submits a declaration under penalty of perjury that paying the appeal fee would cause undue financial hardship to the appealing party the City Manager may grant a waiver of the appeal fee. The City Manager's determination is not appealable and shall be final as to the hardship waiver request.

(B) Hearing Committee. The appeal shall be heard by a committee (the "Hearing Committee"). The Hearing Committee shall consist of two Members of the City Council and the City Manager, plus one alternate City Council Member to facilitate timely hearings pursuant to this ordinance and resolve any potential conflicts of interest. The alternate City Council Member shall only participate in appeals where one of the other two City Council Members is unable to serve due to scheduling concerns or a conflict of interest. City Council Members shall be selected to serve on the Hearing Committee at the same time that other committees are formed by the City Council. Committee members shall not participate in the hearing process in cases when the member has had a substantial personal involvement with the party requesting the hearing and that personal involvement is a conflict of interest. The Hearing Committee shall be advised by the City Attorney to ensure proper legal procedures are followed and adhered to.

(C) Setting Appeal Hearing. The appeal hearing shall be set by the City Manager or his or her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written appeal request. The appeal hearing shall be set for a date no sooner than twenty (20) days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least fifteen (15) days before the date set for hearing.

(D) Conduct of Appeal Hearing.

(1) **Testimony at the Hearing.** At the time set for the appeal hearing, the Hearing Committee shall proceed to hear testimony from the representative of the City, the appellant, and any other competent persons with respect to the determination of a violation and nuisance or the imposition of an administrative penalty.

(2) **Record of Oral Evidence at Hearing.** The proceedings at the hearing shall be reported

by a tape recording, or video recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

(3) Continuances. The Hearing Committee may, upon request of the person, corporation, or entity against whom a penalty is to be imposed, or upon request of the City, grant continuances from time to time for extreme or unusual cause shown, or upon the Hearing Committee's own motion.

(4) Oaths; Certification. The City Clerk or certified shorthand reporter shall administer the oath or affirmation.

(5) Evidence Rules. Government Code Section 11513, subsections (a), (b), and (c) shall apply to all administrative hearings. At the Hearing Committee's sole discretion, other relevant evidence may be admissible and hearsay evidence may be used for the purpose of supplementing and explaining other evidence.

(6) Burden of Proof. The accuracy of the Notice and Order containing the description of the violations and/or public nuisance and the actions required to abate such nuisance or violation is deemed a rebuttable presumption and the burden is on the appellant to provide such facts and information to overcome such presumption by a preponderance of the evidence.

(7) Rights of Parties.

(a) Each party shall have the following rights among others:

(i) To call and examine witnesses on any matter relevant to the issues of the hearing;

(ii) To introduce documentary and physical evidence;

(iii) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

(iv) To impeach any witness regardless of which party first called that witness to testify;

(v) To rebut the evidence against him or her;

(vi) To represent himself or herself or to be represented by anyone of his or her choice.

(b) If a party does not proficiently speak or understand the English language, that party may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have been a resident of the Premises or have had any personal relationship with or involvement in the parties or issues of the case

prior to the hearing.

(8) Official Notice. In reaching a decision, the Hearing Committee may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the City or county, or any of their departments.

(9) Inspection of the Premises.

(a) The hearing officer may inspect the Premises involved in the hearing prior to, during, or after the hearing, provided that:

(i) Notice of such inspection shall be given to the parties before the inspection is made;

(ii) The parties consent and are given an opportunity to be present during the inspection; and

(iii) The hearing officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusions drawn there from.

(b) Each party shall then have a right to rebut or explain the matters so stated by the hearing officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

(c) Notice to the parties or the owner(s)' consent to inspect the building and surrounding properties is not required if the property can be inspected from areas in which the general public has access or with permission of the other persons authorized to provide access to the property on which the building is located.

(E) Form and Contents of the Decision; Finality of Decision.

(1) Format of Hearing Committee's Decision. The Hearing Committee shall issue a written decision containing findings of fact and a determination of the issues presented. The Hearing Committee may affirm, modify or reverse the notice of violation or the Notice and Order imposed by the City or find that the imposition of the penalty is not warranted or is not in the interest of justice.

(2) Contents of Hearing Committee's Decision. If it is shown by a preponderance of all the evidence that the condition of the Premises constitutes a violation of the Rio Dell Municipal Code or is a public nuisance as defined in this chapter, the decision shall declare the Premises to be a public nuisance and shall order and require the appellant to abate the nuisance not later than ten calendar days after the issuance of the decision or, if ten calendar days is insufficient to abate the nuisance, within such other time as specified

by the Hearing Committee not to exceed sixty days. The decision shall inform the appellant that if the nuisance is not abated within the time specified, the nuisance may be abated by the City in such manner as may be ordered by the Department Head and the expense thereof made a special assessment lien upon the property involved. This is in addition to any other legal remedies that the City may choose to compel compliance.

(3) Service of the Hearing Committee's Decision. Upon issuance of the decision, the City shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The Hearing Committee's decision shall be deemed served three days after the date it is mailed to the address provided by the appellant.

(4) Finality of Hearing Committee's Decision. The decision of the Hearing Committee on an appeal of a Notice and Order shall constitute the final administrative decision of the City and shall not be appealable to the City Council or any committee or commission of the City.

Article 5. Enforcement of Hearing Committee Order

8.10.180. Generally

After any notice of violation or any decision of a Hearing Committee made pursuant to this chapter has become final, no person to whom any such order is directed shall fail, neglect or refuse to obey such order.

8.10.190. Failure to Obey Order—Abatement by City.

(A) If, after any notice of violation or any order of a Hearing Committee made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Department Head is authorized and directed to cause the nuisance to be abated by City personnel or private contract. In furtherance of this section, the Department Head shall obtain a warrant, if required, and thereafter is expressly authorized to enter upon the Premises for the purpose of abating the nuisance.

(B) Additionally, any person who fails to obey such order shall be guilty of a misdemeanor punishable as specified in Section 8.10.070(a)(2) of this chapter.

8.10.200. Interference with Work Prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City, or with any person who owns or holds any estate or interest in any Premises on which a nuisance exists and which must be abated under the provisions of this chapter, whenever such officer, employee, contractor or authorized representative of the

City, or person having an interest or estate in such Premises is engaged in the work of abating any nuisance as required by the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this chapter.

8.10.210. Costs of Abatement.

(A) The Department Head shall keep an account of the costs and expenses of abating such nuisance, and the City shall render a statement of such costs to the person or persons receiving the notice to abate.

(B) Such person or persons receiving the notice of violation or decision of the hearing officer shall be liable to the City for any and all costs and expenses to the City involved in abating the nuisance. Such costs and expenses are due upon receipt of the statement required in subsection (A) of this section.

(C) Costs and expenses as referred to in this section shall include all costs allowed to be recovered by law, including attorneys' fees as allowed by Government Code Section 38773.5 or its successor.

8.10.220. Procedure for Assessing Costs.

If the person liable to pay the costs of abatement fails to do so within thirty calendar days of receiving the statement of such costs, the City may initiate proceedings to have such costs assessed against the real property or Premises on which the City abated the nuisance. Such proceedings and notice of such proceedings shall be performed in accordance with Section 54954.6 of the California Government Code. The costs of abatement shall be treated as a new assessment for purposes of Section 54954.6. No majority protest rights exist for this assessment. The Department Head shall present to the City Council a report of costs for abating the nuisance at the public meeting required by Section 54954.6.

8.10.230. Assessment of Costs—Special Assessment Lien Against Property.

(A) The total cost for abating a nuisance shall constitute a special assessment against the Premises to which it relates, and upon recordation in the office of the county recorder of a notice of lien, shall constitute a lien on the property for the amount of such assessment. The procedure for collecting abatement costs through a special assessment lien shall be in accordance with California Government Code Section 38773.5.

(B) After such recordation, a copy of the lien shall be turned over to the county assessor, who shall then enter the amount of the lien on the assessment rolls as a special assessment. Thereafter, said amount shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided by Government Code Section

38773.5 and as provided for ordinary municipal taxes.

Article 6. Additional Provisions Governing Abatement of Vehicles

8.10.240. Application of Article.

The requirements of this article apply to any action taken under this chapter to abate as a public nuisance an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof from private or public property.

8.10.250. Exemptions.

(A) This article shall not apply to:

- (1) A vehicle, or part thereof, that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
- (2) A vehicle, or part thereof, that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard.

(B) Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of a law other than Chapter 10, commencing with Section 22650, of Division 11 of the California Vehicle Code and this article.

8.10.260. Article Not Exclusive Regulation.

This article is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the City. It shall supplement and be in addition to the other regulatory Codes, statutes and ordinances heretofore or hereafter enacted by the City, the state or any legal entity or agency having jurisdiction.

8.10.270. Persons Granted Franchise or Contract—Right of Entry.

When the City has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article.

8.10.280. Assessment of Administrative Costs Determination.

Administrative costs incurred by the City under this article shall be assessed pursuant to Article 8.10.220 of this chapter.

8.10.290. Abatement and Removal Authority.

Upon discovering the existence of an abandoned, wrecked, dismantled or inoperative vehicle, or parts thereof, on private property or public property within the City, the Department Head shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed in this chapter.

8.10.300. Notice of Violation for Abandoned or Inoperable Vehicles.

A notice of violation to abate and remove a vehicle or parts thereof as a public nuisance, as required by Section 8.10.130, shall be served by registered or certified mail on the owner of the land as shown on the last equalized assessment roll and the owner of record of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notice of violation shall comply with Section 8.10.140, and also shall be in substantially the following forms:

**NOTICE OF INTENTION TO ABATE AND
REMOVE AN ABANDONED, WRECKED,
DISMANTLED, OR INOPERATIVE
VEHICLE OR PARTS THEREOF AS
A PUBLIC NUISANCE**

(Name and address of owner or land)

As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned, pursuant to Rio Dell Municipal Code Chapter 8.15 has determined that there exists upon your land an abandoned, wrecked, dismantled or inoperative vehicle (or parts thereof) registered to _____, license number _____, which constitutes a public nuisance pursuant to provisions of Chapter 8.10. You are hereby notified to abate the nuisance by removing the vehicle (or parts of the vehicle) within ten (10) days from the date of mailing of this notice. If you fail to remove the vehicle or parts within ten (10) days, the City will abate the nuisance by removing the vehicle or parts to a scrap yard or automobile dismantler's yard, after which the vehicle or parts shall not again be made operable or reconstructed.

Removal costs and administrative costs will then be assessed to you as owner of the land on which the vehicle or parts are located. As owner of the land on which the vehicle or parts of the vehicle are located, you are hereby notified that you may, within ten (10) days after the mailing of this notice, request a public hearing. If such a request is not received by the Department Head within the ten (10) day period, the Department Head shall have the authority to abate and remove the vehicle or parts of the vehicle as a public nuisance and assess the removal and administrative costs without a public hearing. You may submit a sworn written statement within such ten (10)

day period denying responsibility for the presence of the vehicle or parts of the vehicle on your land, with your reasons for denial. Such statement shall be construed as a request for hearing at which your presence is not required.

You may appear in person at the hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement in time for consideration at the hearing. You may, through such sworn written statement deny responsibility for the presence of the vehicle or parts on your land with your reasons for denial.

Notice mailed _____ (date) [Department Head]

**NOTICE OF INTENTION TO ABATE AND
REMOVE AN ABANDONED, WRECKED,
DISMANTLED OR INOPERATIVE
VEHICLE OR PARTS THEREOF AS
A PUBLIC NUISANCE**

(Name and address of last registered and/or legal owner of record of vehicle—Notice should be given to both if different)

As the last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc) you are hereby notified that the undersigned pursuant to Rio Dell Municipal Code Chapter 8.15, has determined that the vehicle (or parts of the vehicle) exist as an abandoned, wrecked, dismantled, or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provisions of Chapter 8.15.

You are hereby notified to abate the nuisance by removing the vehicle or parts of the vehicle within ten (10) days from the date of mailing of this notice. If you fail to remove the vehicle or parts within ten (10) days, the City will abate the nuisance by removing the vehicle or parts to a scrap yard or automobile dismantler's yard, after which the vehicle or parts shall not again be made operable or reconstructed.

Removal costs and administrative costs will then be assessed to you as owner of the land on which the vehicle or parts are located. As registered (and/or legal) owner of record of the vehicle (or parts of the vehicle), you are hereby notified that you may, within ten (10) days after mailing of this notice, request a public hearing. If such a request is not received by the Department Head within the ten (10) day period, the Department Head shall have the authority to abate and remove the vehicle or parts of the vehicle without hearing.

Notice mailed _____ (date) [Department Head]

8.10.310. Hearing—Generally.

Upon request by the owner of the vehicle or owner of the land received by the Department Head within ten days after the mailing of the notices of intention to abate and remove, a public hearing

shall be held in accordance with Section 8.10.170 on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle or parts thereof against the property on which it is located.

The owner of the land on which the vehicle is located may appear in person at the hearing or may present a sworn written statement denying responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that the landowner has not subsequently acquiesced to its presence, then the City shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect those costs from the landowner, if the vehicle has been removed from the property

8.10.320. Hearing—Presence of Owner Not Required—Abatement Without Hearing.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land within ten days after the mailing of the notice of violation to abate and remove, the statement shall be construed as a request for a hearing that does not require the owner's presence. If such a request for hearing is not received within the ten days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle or parts thereof as a public nuisance without holding a public hearing.

8.10.330. Order Requiring Removal.

At the conclusion of the public hearing, the Hearing Committee may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled or is inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as provided in this article and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.

8.10.340. Hearing—Non-assessment of Costs.

If it is determined at the hearing that the vehicle was placed on the land without consent of the owner of the land and that he or she has not subsequently acquiesced in its presence, the Hearing Committee shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.

8.10.350. Hearing—Notification of Decision.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land but does not appear, or if an interested party makes a written presentation to the hearing officer but does not appear, he or she shall be notified in writing of the decision.

8.10.360. Removal—When

Once the decision of the Hearing Committee becomes final, the vehicle or parts thereof found to be a public nuisance may be disposed of by removal to a scrap yard or automobile dismantler's yard ten calendar days after adoption of the order declaring the vehicle or parts thereof to be public nuisance. After a vehicle has been removed it shall not thereafter be reconstructed or made operable, unless it is a vehicle that qualifies for either horseless carriage license plates or historical vehicle plates, pursuant to California Vehicle Code Section 5004, in which case the vehicle may be reconstructed or made operable.

8.10.370. Removal—Notice to Department of Motor Vehicles.

Within five days after the date of removal of the vehicle or parts thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle or parts thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles any evidence or registration available, including registration certificates, certificates of title and license plates.

8.10.380. Removal—Costs—Assessment—Collection.

If the administrative costs and the cost of removal which are charged against the owner of the land pursuant to Section 8.10.280 are not paid within thirty days of the date of the order, such costs shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code and shall be transmitted to the assessor for placement on the property tax roll and collected by the tax collector. The assessment shall have the same priority as other City taxes.